

## **Share and Asset Purchase Agreement**

dated as of February 18, 2006

by and between

**Ciba Specialty Chemicals Holding Inc.**, Klybeckstrasse 141, CH – 4057 Basel, Switzerland

(hereinafter the **Seller**)

and

**Huntsman International LLC (Huntsman)**, 500 Huntsman Way, Salt Lake City, Utah 84108

**RM 2526 Vermögensverwaltungs GmbH**, registered AG München HRB 160194, Germany  
(whose name is currently being changed to Huntsman (Holdings) Germany GmbH  
(Huntsman Germany), Land-Au 30, 94469 Deggendorf, Germany

(Huntsman and Huntsman Germany hereinafter collectively referred to as the **Buyer**)

(Seller and Buyer each a **Party**, and together the **Parties**)

relating to  
the sale and purchase of Ciba Group's Textile Effects Business

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NOW, THEREFORE, the Parties hereto agree as follows:

## 1. Definitions

Capitalized terms used in this Agreement shall have the meaning assigned to them in Schedule 1.

## 2. Object of Sale | License | Consideration

### 2.1 Sale and Transfer of Shares

- (a) Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell, and to cause the Affiliates set forth in Schedule 2.1 (the **Share Seller Companies**) to sell, and at the Closing Date to transfer to Buyer or its designated Affiliates, and Buyer hereby agrees to buy or, as the case may be, to cause its designated Affiliates to buy, at the Closing Date, from the Share Seller Companies, the Share Seller Companies' legal title to and beneficial ownership of the interest described in such Schedule (collectively, the **TE Shares**) in:
- (i) Ciba Spezialitätenchemie Pfersee GmbH, Langweid/Lech, Germany (hereinafter **Pfersee**), which shares shall be transferred to Huntsman Germany;
  - (ii) Guangdong Ciba Specialty Chemicals Co., Ltd., Panyu, China (hereinafter **Panyu**);
  - (iii) Shenzhen Ciba Specialty Chemicals Co., Ltd., Shenzhen, China (hereinafter **Shenzhen**);
  - (iv) Qingdao Ciba Dyes Co., Ltd., Qingdao, China (hereinafter **Qingdao**); and
  - (v) Swathi Organics & Specialties Private Limited, Pondicherry, India (hereinafter **Swathi** and together with **Pfersee**, **Panyu**, **Shenzhen**, and **Qingdao**, the **TE Companies**).
- (b) If, and to the extent, that Seller prior to Closing, in its reasonable discretion, determines that any of the TE Companies owns or is otherwise entitled to any rights or assets that do not fall within the categories of assets and rights described in Article 2.2.1(a)(i) through Article 2.2.1(a)(xvii) inclusive, it shall be agreed that Seller shall have the right to cause such rights, assets and contracts, together with the respective liabilities, to be transferred to Seller or its designated Affiliate(s) prior to the Closing Date; provided that Seller shall bear all costs of such transfer including the

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being further understood that to the extent that any product registrations, marketing rights and the applications therefor are at the same time relating to the businesses retained by the Ciba Group, appropriate mechanisms need to be implemented (as part of the obligations under Article 8.1), such as the granting of a right of distribution or co-ownership, to enable Seller to continue the operation of the businesses it retains until such product registrations and marketing rights are reissued to Seller or its relevant Affiliate; conversely, to the extent that product registrations, marketing rights and the applications therefor do not qualify as "primarily relating" within the meaning of this Article 2.2.1(a)(iv) but are at the same time relating to the TE Business, appropriate equivalent mechanisms need to be implemented to enable Buyer to continue to operate the TE Business;

- (v) the Know How primarily relating to the TE Business (the **Transferred TE Know How**), including the Know How licensed by Buyer or any of its Affiliates to the Ciba Group following the Closing Date for use under the toll manufacturing agreements referred to in Article 8.4(a), under the terms of which Seller or its Affiliates manufacture(s) certain products for Buyer and its Affiliates for the benefit of the TE Business;
- (vi) the marketing and promotional documents, such as marketing and promotional plans, documents and materials, training manuals and materials, together with all copyrights pertaining thereto, to the extent owned by the Asset Seller Companies, that are primarily relating to the TE Business, and the lists of customers of the TE Business, including the documents specified in Schedule 2.2.1(a)(vi) (the **Transferred TE Marketing and Promotional Documents**); *provided, however*, that it shall be understood that Buyer shall not be entitled to receive any information on customers of the Ciba Group which do not have at the Closing Date, or which did not have in the period between January 1, 2004 and the Closing Date, any commercial dealings with the TE Business;
- (vii) the real property (including the buildings, structures and improvements located thereon, fixtures contained therein and the appurtenances thereto), all as further specified in Schedule 2.2.1(a)(vii) (the **Transferred TE Real Property**);
- (viii) the leases and other third party rights *in rem* pertaining to the buildings, structures and improvements, all as described in Schedule 2.2.1(a)(viii), including the fixtures contained in such buildings, structures and improvements and the appurtenances relating thereto (the **Transferred TE Leases**);

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accounts and payable records, files, books, correspondence, including sales records (the **TE Financial Records**), including to the extent possible by giving access in electronic form, which primarily relate to the TE Business;

- (xv) subject to Article 10.3, all rights and entitlements under the contracts and agreements to which an Asset Seller Company is a party and which primarily relate to the TE Business, including the contracts material to the TE Business set forth in Schedule 2.2.1(a)(xv), but excluding any of the contracts and agreements subject to the IT Service Agreement, (the **Transferred TE Contracts**);
- (xvi) a cloned and separated version of BPCS, as set forth in Section 2.5(a) and Section 2.5(e)(i) of the IT Service Agreement, entered into between the Parties hereto and executed concurrently herewith; and
- (xvii) without prejudice to any of the Ancillary Agreements, the IT Service Agreement or any other agreement between the Parties hereto and incidental to the transactions contemplated under this Agreement, all other properties and assets of whatever nature, real or personal, tangible or intangible, that are owned, leased or licensed by Seller, the Asset Seller Companies or any of their respective Affiliates on the Closing Date, and primarily relating to the TE Business.

The Parties agree that Seller shall deliver, no later than three (3) Business Days prior to the Closing, where required, updates to the Schedules referred to in the foregoing subparagraphs to reflect changes that have occurred following the date hereof in the ordinary course of business and consistent with Article 7.3 below.

(b) Notwithstanding anything to the contrary in this Agreement:

- (i) the Trademarks set forth in Schedule 2.2.1(b)(i) (the **Excluded Trademarks**);
- (ii) the Patents set forth in Schedule 2.2.1(b)(ii) (the **Excluded Patents**);
- (iii) the Domain Names set forth in Schedule 2.2.1(b)(iii) (the **Excluded Domain Names**);
- (iv) the Know How licensed by Seller or its Affiliates to Buyer or its Affiliates following the Closing Date for use under the toll manufacturing agreements under the terms of which Buyer or its Affiliates manufacture(s) certain products for Seller and its Affiliates for the benefit of a business retained by the Ciba Group;

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**Contracts);**

(the assets, contracts and agreements set forth in this Article 2.2.1(b), collectively the **Excluded Assets**);

are not part of the sale and purchase contemplated hereunder, are excluded from the Transferred TE Assets and shall, except as otherwise provided in the Excluded Plant Lease Agreements as set forth in Schedule 8.4(c), remain the exclusive property of Seller on, before and after the Closing Date.

For the avoidance of doubt, the use of any Intellectual Property Rights or Know How by businesses retained by the Ciba Group in the context of supplying the TE Business with products used for manufacturing or selling products in the Textile Franchise under any supply agreements (but not, for purposes of this sentence, the use of any Intellectual Property Rights or Know How under any toll manufacturing agreements by which Seller or its Affiliates manufacture(s) certain products for Buyer and its Affiliates for the benefit of the TE Business) shall not be considered for the determination of the Transferred TE Assets, the scope of any licenses or the scope of any non-assertion obligations under this Agreement, and such Intellectual Property Rights and Know How shall be part of the Excluded Assets.

**2.2.2 Assumption of Obligations and Liabilities**

- (a) Subject to the terms and conditions set forth in this Agreement, at the Closing Date, Buyer or its designated Affiliates to which the applicable Transferred TE Assets are transferred (*provided, however*, that Huntsman, in relation to Seller, shall be jointly and severally liable with each such designated Affiliate for the due and proper performance of the Assumed TE Liabilities (as defined below) assumed by such Affiliate) shall assume and thereafter pay, perform and discharge when due all of the following obligations and liabilities of Seller and its Affiliates (such obligations and liabilities, the **Assumed TE Liabilities**):
- (i) all obligations and liabilities to the extent included in the Net Debt and the Net Working Capital as shown on the Final Closing Balance Sheet and, as the case may be, the Final Local Closing Balance Sheets;
  - (ii) all obligations and liabilities attributable to the Buyer's and its Affiliates' ownership or use of the Transferred TE Assets or the conduct of the TE Business after the Closing to the extent attributable to such period of time;
  - (iii) all obligations and liabilities under or in connection with the Transferred TE Contracts which arise after the Closing to the extent attributable to such period

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Affiliates may be liable vicariously or otherwise, relating to or arising from activities before the Closing;

- (B) all obligations and liabilities in relation to Litigation (as defined hereinafter) attributable to the operation of the TE Business prior to the Closing; and
  - (C) all obligations and liabilities (x) under the Transferred TE Contracts which are attributable to the time period prior to the Closing, or (y) resulting from breaches of Transferred TE Contracts which occurred prior to Closing; and
- (ii) except for the obligations and liabilities described in Article 2.2.2(a)(i), Buyer and its Affiliates shall not assume, and Seller and its Affiliates shall retain, any of the following obligations and liabilities (to the extent not already included in the Pre-Closing Liabilities), whether or not the following obligations and liabilities are attributable to the period of time before or after the Closing Date:
- (A) all obligations and liabilities relating to, arising out of or in connection with the Excluded Assets (other than to the extent expressly set forth in the Ancillary Agreements, the IT Service Agreement or the Excluded Plant Lease Agreements, and except for the contracts of employment with any Transferring Employee at the Excluded Plants and the portion of the Excluded Contracts split off to Buyer or its Affiliates as provided in the High Level Implementation Plan);
  - (B) all the obligations and liabilities that are the responsibility of the Seller pursuant to Article 9.4;
  - (C) all obligations and liabilities in relation to Taxes that are the responsibility of Seller pursuant to Articles 9.3 or 12.1;
  - (D) all obligations and liabilities for or in relation to (i) the Transferring Employees, including the obligations and liabilities for or in relation to the respective pension and other benefit plans, that are the responsibility of Seller pursuant to Article 10.9 and the Schedules thereto or (ii) the Retained Share Costs;
  - (E) all obligations and liabilities relating to or arising from the failure of the Seller or its Affiliates to comply with their respective covenants in Article 7.4 or elsewhere in this Agreement;
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Buyer is Licensor) in the event that Licensor intends not to renew and maintain the registration of any of such Patent. Licensor shall notify Licensee within due time of its intention not to renew and maintain the registration of any of the Licensed Patents, and Licensee shall, within thirty (30) calendar days of Licensor's notification, declare to Licensor whether it wants to exercise its right to acquire such Patent, for no additional consideration. In the event of Licensee acquiring any of the Licensed Patents under the foregoing right, Licensee shall bear all costs for maintaining and renewing the registration of any such Licensed Patent as from the date of its declaration to Licensor that it intends to exercise its right to acquire such Patent, for no additional consideration.

- (d) Buyer agrees to grant to Seller and its Affiliates a worldwide, non-exclusive, irrevocable and royalty-free license for use other than in the Textile Franchise under and to:
- (i) the Patents set forth in Schedule 2.2.1(a)(ii) to the extent that such Patents have been used in the businesses retained by the Ciba Group (for the avoidance of doubt, excluding the TE Business) during the twelve (12) months preceding the Closing Date. With respect to such Patents, the license (and sublicense, if any) hereunder shall be limited to the use in the businesses retained by the Ciba Group as of the Closing Date (excluding, for the avoidance of doubt, the use in the Textile Franchise, but including the use made by any licensees as of the Closing Date); provided, however, that any such sub-license shall not be for use in direct competition with the TE Business and Seller shall, and shall cause its Affiliates to, impose upon any such sublicensee confidentiality obligations equivalent to those customarily required by Seller from licensees of patents owned by Seller; and
  - (ii) the Transferred TE Patents set forth in Schedule 2.3.1(d). With respect to such Patents, the license hereunder shall be limited to the use outside the Textile Franchise in laundry, colour filter for LCD applications, fluorescent security marking, pre-extrusion mass treatment, flame retardants and ink applications.

### 2.3.2 Trademarks

- (a) Subject to the terms and conditions of this Agreement, Seller hereby agrees to grant, subject to any third party rights, to Buyer and its Affiliates, for a period of twenty-four (24) months as from the Closing Date, a worldwide, non-exclusive, irrevocable and royalty-free license for all the Trademarks and domain names listed in Schedules 2.3.2(a); provided, however, that such Trademarks and domain names shall only be used within the scope of the Textile Franchise. Within such scope, Buyer shall have the right to sublicense such rights (other than any CIBA Trademark) to any

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- (d) The Purchase Price does not include any VAT (or equivalent Tax) or transfer Taxes, which shall be paid and reimbursed pursuant to Articles 12.1.1 and 12.1.2.

## 2.5 Net Working Capital and Net Debt Adjustment

### 2.5.1 Closing Balance Sheet

- (a) Within sixty (60) Business Days after the Closing Date, Seller shall prepare and deliver to Buyer:
- (i) (x) a statement of the specified assets and specified liabilities of the TE Business pursuant to this Agreement as at the Adjustment Date, including those assets and liabilities as at the Adjustment Date that are subject to a deferred closing in accordance with Article 4.2.6, which shall be audited by Ernst & Young Ltd, Zurich, Switzerland (E&Y) (such statement, together with an unqualified audit opinion from E&Y except that such opinion may include language to the effect that such statement has been prepared from separate records of the TE Business, may not reflect the assets and liabilities as if the TE Business had been operated separately, and includes certain allocations based on the assumptions and estimates used for the TE Statement of Relevant Net Assets made by the Ciba Group, being referred to as the **Closing Balance Sheet** and, upon having become final and binding in accordance with this Article 2.5.1, the **Final Closing Balance Sheet**);
  - (ii) all necessary supporting data for the Closing Balance Sheet, as reasonably requested by Buyer;
  - (iii) a determination of the Net Working Capital and the Net Debt, each calculated by reference to the aggregate of the respective current assets and current liabilities line items and financial assets and financial liabilities line items, respectively, shown on the Closing Balance Sheet, as further specified in Schedule 2.5.1(a), such aggregates, for the avoidance of doubt, including the assets and liabilities relating to the Transferred TE Assets and Assumed TE Liabilities which are subject to a deferred closing pursuant to Article 4.2.6; and
  - (iv) a determination of the Net Working Capital and the Net Debt, calculated in accordance with subparagraph (iii) above but limited to the assets and liabilities relating to the Transferred TE Assets and Assumed TE Liabilities which are subject to a deferred closing pursuant to Article 4.2.6, together with an indication of the value of each such asset and liability for each jurisdiction.
- (b) Buyer shall cooperate with Seller in connection with, shall furnish to Seller all such

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- (f) The Appraiser shall act as an expert and not as an arbitrator. The Appraiser shall only consider those items and amounts as to which Buyer and Seller have disagreed within the time periods and on the terms set forth above in Article 2.5.1(c) and (d), it being understood that the scope of the disagreements to be resolved shall be limited to whether the Net Working Capital and/or Net Debt were determined in accordance with the requirements set forth in this Article 2.5.1 and the Schedules referred to herein, and whether there were mathematical errors in the calculation of the Net Working Capital and Net Debt.
- (g) The Appraiser shall deliver to the Parties, as promptly as reasonably practicable and in any event within thirty (30) Business Days from the date of his or her appointment, a written report setting forth the resolution of any such disagreement. The Appraiser's determination of any subject matter falling within the scope of his or her mandate shall be final and binding on the Parties, except in the event of fraud or manifest error on the part of the Appraiser (provided that, in case of manifest error, the matter shall be remitted to the Appraiser for correction).
- (h) The Appraiser shall make his or her determination of the Net Working Capital and Net Debt in respect of the line items as to which Seller and Buyer have disagreed based on the presentations and supporting materials provided by the Parties and such other documentation and information as the Appraiser may reasonably request from each of the Parties. The Appraiser shall determine his or her own procedure in accordance with the requirements of due process. In particular, the Appraiser shall:
  - (i) give the Parties a reasonable opportunity to make written and oral presentations to him or her;
  - (ii) require that each Party supply the other with a copy of any written presentations at the same time as they are made available to the Appraiser;
  - (iii) permit each Party to be present while oral submissions are being made by the other Party; and
  - (iv) conduct the proceedings in English.
- (i) Each Party and the Appraiser shall, and shall procure that their respective accountants, assistants and other advisers shall, keep all information and documents provided to them pursuant to this Article 2.5.1 confidential and shall not use the same for any purpose other than in connection with the preparation of the Closing Balance Sheet, the determination of the Net Working Capital and Net Debt and the respective proceedings before the Appraiser.

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than +/- CHF 2,000,000, then the Preliminary Consideration shall be increased or decreased (as applicable) by the entire amount of the adjustments (and not just the excess over CHF 2,000,000).

### 2.5.3 Payment of the Net Working Capital Adjustment and the Net Debt Adjustment on the basis of the Final Closing Balance Sheet

Subject to the limitations set forth in Article 2.5.2(c), if the aggregate of the adjustments under Article 2.5.2 results in a reduction in the Preliminary Consideration, Seller shall pay to Buyer the amount of such reduction, and if the aggregate of the adjustments under Article 2.5.2 results in an increase in the Preliminary Consideration, Buyer shall pay to Seller the amount of such increase, in each case in cash by wire transfer of immediately available funds to a bank account designated by the Party receiving payment within five (5) Business Days after the final and binding determination pursuant to Article 2.5.1, plus interest accrued thereon between the Closing Date and the date of payment at the rate set forth in Article 12.3(a).

### 2.6 Allocation of Purchase Price

- (a) The Preliminary Consideration shall be allocated in a manner consistent with Schedule 2.6(a). Schedule 2.6(a) reflects the allocation of the Preliminary Consideration (calculated assuming a Restructuring Deduction of CHF 42,000,000) among the "Category I Sellers", "Category II Sellers" and "Category III Sellers" (in each case, as identified on Schedule 2.6(a)).
- (b) A final determination of the amount of the Preliminary Consideration allocable to the India Sellers (as defined in Schedule 2.6(a)) shall be reasonably determined by Seller prior to Closing. If such amount differs from the amount reflected on Schedule 2.6(a), (i) the amount of Preliminary Consideration allocated to the Switzerland Sellers (as defined in Schedule 2.6(a)) (in the aggregate) shall be adjusted (upward or downward) by 50% of such difference, and (ii) the amount of Preliminary Consideration allocated to the Category III Sellers (in the aggregate) shall be adjusted (upward or downward) by 50% of such difference.
- (c) Except with relation to the India Sellers, the allocation on Schedule 2.6(a) shall be adjusted to reflect the differences between the items included in the calculation of Net Working Capital and Net Debt (as determined under Article 2.5) and the amounts for such items reflected on Schedule 2.6(a) based upon the sources of the differences. Adjustments affecting the items included in the calculation of Net Working Capital and Net Debt for Category I Sellers and Category II Sellers shall result in corresponding changes to the allocation to such Sellers on Schedule 2.6(a). Adjustments affecting the items included in the calculation of Net Working Capital and Net Debt for a Category III Seller will require a recalculation of Section III of Schedule 2.6(a) and

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### 3. Actions Prior to Closing

#### 3.1 General

Unless specifically otherwise provided herein, the Parties undertake to use their commercially reasonable best efforts to procure that:

- (a) the conditions precedent set forth in Article 4.2, as applicable to each of them, shall be satisfied on or by the Closing Date; and
- (b) all their Affiliates will do all acts and things as are reasonably necessary (and within their power) to implement the transactions contemplated by this Agreement.

The Parties shall fully cooperate and promptly inform each other of any relevant actions taken prior to the Closing Date.

#### 3.2 Filings and Submissions

The Parties shall undertake their respective commercially reasonable best efforts to make all filings and submissions required pursuant to Article 4.2.1(a) within thirty (30) Business Days as from the date of this Agreement or such shorter period of time as required by applicable law. Where a filing or submission is the legal responsibility of both Parties, no Party shall make any filings or submissions without the prior consent of the other Party (such consent not to be unreasonably withheld or delayed). Where a filing or submission is the legal responsibility of only one Party, such Party shall duly cooperate with and consult the other Party in preparing any filing or submission.

#### 3.3 Closing Memorandum

At least ten (10) Business Days prior to the Closing Date, Seller's legal counsel shall prepare, in cooperation with Buyer's legal counsel, a closing memorandum which describes the closing actions pursuant to Article 4.3.

#### 3.4 Monthly Financial Data for the TE Segment

Seller hereby undertakes to provide Buyer, on a monthly basis, financial information for the Ciba Group's TE Segment consisting of a summary of net sales, profits and losses, balance sheet and cash flow of the TE Segment, both current and year-to-date, with a reasonable comparison to the previous year period, such financial information (the **Monthly Financials**) to be delivered by the twentieth (20<sup>th</sup>) Business Day of the month following the reference period of such financial data until the Closing Date and until each Local Closing Date in relation to the business and assets to which such Local Closing Date relates.

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- (b) no action by a third party shall be pending and no order, injunction or decree of any court, administrative body or arbitration tribunal which prevents the Closing of the transactions contemplated hereunder shall have been issued and not vacated;
- (c) the Materiality Condition shall have been satisfied and either Seller or Buyer shall have made a request pursuant to Article 4.2.6(a) that Closing be effected;
- (d) the Parties shall have reached agreement on the definitive versions of the Ancillary Agreements and the Excluded Plant Lease Agreements; and
- (e) the employee information and consultation requirements and any other employee information and consultation steps required under the laws applicable to any part of the TE Business in connection with the transactions contemplated in this Agreement, have been performed.

#### 4.2.2 Conditions to Obligations of Buyer

The respective obligations of Buyer to effect the transactions contemplated under this Agreement shall be subject to the satisfaction or waiver, on or by the Long Stop Date, of the following conditions:

- (a) Seller shall have performed, in all material respects, all of its obligations undertaken in this Agreement or pursuant hereto that are to be performed on or by the Closing Date, including performance of all corporate and contractual formalities for the transfer of the TE Shares, TE Assets and Transferred TE Contracts;
- (b) all representations and warranties of the Seller pursuant to Article 5.1 and Schedule 5.1 hereto shall be true and accurate in all material respects at and as of the date of this Agreement and the Closing Date, except that (i) those representations and warranties that are explicitly made at and as of a specific date shall be true and accurate at and as of such date only, and (ii) for purposes of determining whether this closing condition has been satisfied, any representations or warranties of the Seller that are qualified by a materiality standard (e.g., words like "in all material respects") shall be read without qualifications; *provided, however*, that breaches of the representations and warranties shall only be deemed to constitute a non-satisfaction of this condition if such breaches, individually or in the aggregate, (i) result, or are reasonably likely to result, in a loss to Buyer, its Affiliates and/or the TE Companies that in the aggregate exceeds CHF 35,000,000, or (ii) are reasonably likely to materially and adversely affect the TE Business and cannot be remedied in all material respects by the payment of monetary compensation;
- (c) no Material Adverse Effect shall have occurred between the signing of this Agreement

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#### 4.2.5 Right of Termination

- (a) Should the conditions precedent to Closing set forth in Articles 4.2.1 or 4.2.2 not be satisfied by the Long Stop Date, Buyer may terminate this Agreement by giving notice to Seller unless Buyer itself acted in material breach of its obligations under this Agreement or otherwise in bad faith, and in so doing, prevented or interfered with the satisfaction of such condition precedent.
- (b) Should the conditions precedent to Closing set forth in Articles 4.2.1 or 4.2.3 not be satisfied by the Long Stop Date, Seller may terminate this Agreement by giving notice to Buyer, unless Seller itself acted in material breach of its obligations under this Agreement or otherwise in bad faith, and in so doing, prevented or interfered with the satisfaction of such condition precedent.
- (c) If this Agreement is terminated according to Article 4.2.5(a) or (b), such termination shall be without liability of any Party to the other Party; *provided, however*, that if such termination is the result of (i) the willful or grossly negligent misconduct of either Party to satisfy its respective obligations under Article 3.1 or (ii) a failure to perform a covenant under this Agreement, such Party shall be liable to the other Party for any damage, loss, costs or expenses incurred or sustained as a result of such misconduct or breach. It is understood that, in addition to such liability, either Party shall be entitled to seek relief in the form of specific performance, injunctions or other interim relief. Neither Party shall oppose the granting of such relief on the basis that the other Party may be made whole by the payment of a monetary amount.
- (d) If this Agreement is terminated pursuant to this Article 4.2.5(a) or (b), all provisions of this Agreement shall cease to be effective except for Articles 4.2.5(c) and (d), Article 10.1 (Press Releases and Other Public Announcements), Article 12.3 (Interest), Article 13 (General Provisions) and Article 14 (Governing Law and Dispute Settlement).

#### 4.2.6 Deferred Closing | Deferred Closing Balance Sheet

- (a) Upon satisfaction of the Materiality Condition (and provided all other conditions to Closing set forth in Articles 4.2.1, 4.2.2 and 4.2.3 are satisfied, or as the case may be, waived, where so permitted), either Party shall have the right to request upon written notice to the other Party that Closing be effected with respect to those TE Assets (together with the Transferring Employees and the Assumed TE Liabilities attributable to those TE Assets) for which the Materiality Condition has been satisfied. With respect to the remainder of the TE Assets, the Transferring Employees and the Assumed TE Liabilities, Closing shall be deferred and consummation or, if necessary, separate consummations, of the transactions in relation to such assets, shares,

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- (ii) all necessary supporting data for the Local Closing Balance Sheet, as reasonably requested by Buyer;
- (iii) a determination of the Net Working Capital and the Net Debt as at the relevant Local Adjustment Date, each calculated by reference to the aggregate of the respective current assets and current liabilities line items and financial assets and financial liabilities line items, respectively, shown on the Local Closing Balance Sheet, as further specified in Schedule 2.5.1(a); provided that all obligations and liabilities owed to or by Buyer or its Affiliates in connection with the Textile Franchise (but excluding liabilities which have arisen under normal commercial dealings between Seller and its Affiliates on the one side and Buyer and its Affiliates on the other), including obligations and liabilities which have been incurred between the Closing Date and the relevant Local Closing Date, shall not be taken into account for determining the Net Working Capital and Net Debt as at the relevant Local Adjustment Date; and
- (iv) its determination of the adjustments payable pursuant to Article 4.2.6(f), (g), and (h).
- (v) Article 2.5.1 shall apply *mutatis mutandis* in respect of the procedure for establishing the Final Local Closing Balance Sheet and the final and binding determination of the Net Working Capital and Net Debt.

(f) **Net Working Capital Adjustment**

- (i) If, and to the extent, the Net Working Capital as at the Local Adjustment Date (as finally and bindingly determined in accordance with Article 4.2.6(e)) exceeds the Net Working Capital included in the Final Closing Balance Sheet in relation to the current assets and current liabilities subject to deferred closings pursuant to this Article 4.2.6, the Preliminary Consideration shall, subject to subparagraph (h) and (i) below, be increased on a CHF-for-CHF basis by the amount of such excess.
- (ii) If, and to the extent, the Net Working Capital as at the Local Adjustment Date (as finally and bindingly determined in accordance with Article 4.2.6(e)) is less than the Net Working Capital included in the Final Closing Balance Sheet in relation to the current assets and current liabilities subject to deferred closings pursuant to this Article 4.2.6, the Preliminary Consideration shall, subject to subparagraph (h) and (i) below, be decreased on a CHF-for-CHF basis by the amount of such shortfall.

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sensible in light of the particular circumstances and the relevant timing of such deferred closings. Each Party shall consider in good faith any proposals made by the other Party with the aim of facilitating the adjustment procedures in light of the actual circumstances and timing of a deferred closing, provided such proposed alternatives are economically equivalent to the adjustments set out herein.

### 4.3 Closing Actions

#### 4.3.1 Actions by Seller

At the Closing Date, Seller shall, and shall cause the Share Seller Companies and the Asset Seller Companies (as the case may be) to:

- (a) deliver to Buyer or its designated Affiliates certificates representing the TE Shares, if any, endorsed in blank and do all such other acts as may be required under applicable law to transfer the TE Shares and all rights connected therewith from the Share Seller Companies to Buyer or its designated Affiliates;
- (b) deliver to Buyer or its designated Affiliates originals of all corporate actions required under applicable law and the articles of incorporation of the TE Companies to approve the transfer of the TE Shares and the TE Assets from the relevant Share Seller Companies and Asset Seller Companies to the Buyer or its designated Affiliates;
- (c) deliver to Buyer or its designated Affiliates a certified copy of any power of attorney under which any of the transfers or other documents referred to in this Article 4.3.1 are executed, including evidence reasonably satisfactory to Buyer of the authority of any Person signing on behalf of Seller;
- (d) as instructed by Buyer no later than twenty (20) Business Days prior to the Closing Date, deliver to Buyer resignation letters of the Seller's appointed members of the board of directors of the TE Companies in which such directors (i) declare their resignation as of the Closing Date as members of the board of directors and (ii) waive any rights and declare to have no claims of any kind whatsoever against the TE Companies arising out of, or in connection with, their board membership;
- (e) deliver to Buyer or its designated Affiliates copies of opinions of any works council of Seller's Affiliates from which an opinion is required under applicable laws; and
- (f) deliver (electronic) copies of the TE Financial Records, to the extent reasonably available, and, to the extent not reasonably available, Seller shall provide Buyer or its representatives with reasonable access to such Financial Records.

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Document, the terms of this Agreement shall prevail (unless expressly agreed otherwise by the Parties); it being understood that nothing in this proviso shall be interpreted as impairing those parts of the Transfer Documents that are necessary to effect the transfer of the relevant TE Assets in accordance with the requirements of applicable local laws; and

- (c) execute the Ancillary Agreements and the Excluded Plant Lease Agreements.

## **5. Representations and Warranties**

### **5.1 Representations and Warranties of Seller**

Subject to the limitations set forth in Articles 6 and 11, Seller hereby represents and warrants to Buyer that the representations and warranties set forth in Schedule 5.1 are true and accurate at and as of the date of this Agreement and at and as of the Closing Date, and at and as of each subsequent Local Closing Date with respect to the subject matter of the Local Closing, except that those representations and warranties that are explicitly made as of a specific date shall be true and accurate as of such date only.

### **5.2 Representations and Warranties of Buyer**

Subject to the limitations set forth in Article 6, Buyer hereby represents and warrants to Seller that the representations and warranties set forth in Schedule 5.2 are true and accurate at and as of the date of this Agreement and at and as of the Closing Date, and at and as of each subsequent Local Closing Date with respect to the subject matter of the Local Closing, except that those representations and warranties that are explicitly made as of a specific date shall be true and accurate as of such date only.

### **5.3 Exclusive Representations and Warranties**

- (a) Seller acknowledges and agrees that, other than as expressly provided in this Agreement, the Transfer Documents and the documents, instruments and agreements associated therewith or incidental thereto, Buyer has not made and does not make, and Seller has not relied and does not rely on, any representation or warranty, express or implied, pertaining to the subject matter of this Agreement.
- (b) Buyer acknowledges and agrees that, other than as expressly provided in this Agreement, the Transfer Documents and the documents, instruments and agreements associated therewith or incidental thereto, Seller has not made and does not make, and Buyer has not relied and does not rely on, any representation or warranty, express or implied, pertaining to the subject matter of this Agreement. In particular, and without limitation to the foregoing, Buyer acknowledges and agrees

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practicable after Buyer or any of its Affiliates, including, after the Closing Date, the TE Companies, have received any such submission, decision or order but in any event within such period as will afford Seller a reasonable opportunity to respond to such submission or to lodge a timely appeal or other challenge against such decision or order.

- (b) Failure to give the Notice of Breach within the time periods set forth above shall not exclude Seller's liability hereunder; *provided, however*, that Seller shall not be liable for any damage, loss, expense, or cost to the extent that the same is directly attributable to Buyer's failure to give duly and timely notice within the time periods set forth in this Article 6.1.2.
- (c) The regime provided for in this Article 6.1.2 shall be in lieu of and not in addition to Buyer's duty to immediately inspect and notify Seller in accordance with article 201 CO.

#### 6.1.3 Term of Representations and Warranties

The representations and warranties set forth in Article 5.1 shall survive the Closing Date:

- (a) until the fiftieth (50<sup>th</sup>) anniversary of the Closing Date or any longer period as may be permitted under applicable law with respect to matters covered by Sections 1 of Schedule 5.1 (Organization and Qualification), Section 4 of Schedule 5.1 (Due Authorization), Section 5 of Schedule 5.1 (No Conflict/Consents), and Section 7 of Schedule 5.1 (Assets);
- (b) until the eleventh (11<sup>th</sup>) anniversary of the Closing Date with respect to matters covered by Section 26 of Schedule 5.1 (Competition Law Matters);
- (c) until three (3) months after expiry of the applicable statute of limitations with respect to matters covered by Sections 6 and 19 of Schedule 5.1 (Taxes/Compliance);
- (d) with regard to the representations and warranties in Section 20 of Schedule 5.1 (Health, Safety and Environment), until the earlier of (x) the fifth (5<sup>th</sup>) anniversary of the Closing Date and (y) the date on which a particular property, facility (including the production sites located on the Transferred TE Real Property) or business is being put to a use substantially different from that of the TE Business as conducted at the Closing Date such that the health, safety and environmental compliance standards for that new use are materially more stringent than the standards applicable at the Closing Date (the Excess Use); *provided, however*, that subpart (y) hereof shall only affect the survival period set forth herein in respect of the Excess Use and only in respect of such particular property, business or facility;

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misrepresentations or breaches reflected in the update to the Disclosure Letter, the matters and information Fairly Disclosed in the Disclosure Letter delivered on the date of this Agreement shall operate as a qualification of Seller's representations and warranties as set forth in Article 5.1 and Schedule 5.1, and Seller shall be under no liability for breaches of such representations and warranties; *provided, however*, that neither the Disclosure Letter nor the update thereto shall have any effect on Seller's liability for the Excluded Liabilities or for breach of or failure to perform any provision of this Agreement except, in the case of the Disclosure Letter delivered on the date of this Agreement, on the representations and warranties in Article 5.1 and Schedule 5.1. For the avoidance of doubt, if as of the Closing Date, breaches of Seller's representations and warranties exist, and such breaches result, or are reasonably likely to result, in a loss to Buyer, its Affiliates and/or the TE Companies that in the aggregate do not exceed CHF 35,000,000, there shall be no failure of Buyer's Closing conditions in Article 4.2.2(b), but Buyer shall be entitled to assert claims against Seller with respect to such breaches after the Closing Date. The exclusion set forth herein shall be in lieu of, and not in addition to, the exclusions provided for in article 200 CO.

#### 6.1.5 Third Party Claims

- (a) In the event of a proceeding involving a claim made by any third party that could result in a liability of Seller pursuant to Article 6.1 or an indemnification of Buyer by Seller pursuant to Article 9.1 (an **Indemnified Claim**), without prejudice to the validity of the third party claim or alleged claim in question, the Buyer shall allow, and shall procure that any of its Affiliates shall allow, Seller and its accountants and professional advisers to investigate the matter or circumstance alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim, and for such purpose the Buyer shall, and shall procure that its Affiliates shall, at Seller's expense, give all such information, documentation and assistance, including access to premises and personnel, and the right to examine and copy or photograph any assets, accounts, documents, books and records, as Seller or its accountants or professional advisers may reasonably request for such purposes during a period of not more than twenty (20) Business Days after the date on which Seller becomes aware of such claim or alleged claim; *provided, however*, that Seller and its agents shall not conduct such investigation in a manner that is materially disruptive to the ability of Buyer or its Affiliates to carry on its business.
- (b) Provided that (x) within thirty (30) Business Days after the date on which Seller becomes aware of such claim or alleged claim, Seller delivers a written notice to Buyer requesting that such claim be contested, (y) Seller acknowledges in such notice its responsibility for such claim if successful, on the basis of the facts presented by Buyer to Seller, and (z) Seller shall have agreed, subject to any applicable limitations in Article 6.1 and Article 11, to pay to the Buyer all costs and expenses that the Buyer incurs in connection with contesting such claim, including, without limitation,

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## 6.2 Remedies of Seller

The provisions of Article 6.1 shall apply *mutatis mutandis* with respect to any misrepresentation or breach of warranty by Buyer.

## 6.3 Exclusive Remedies

The remedies in this Article 6 for misrepresentations and breach of warranties pursuant to Article 5 and Schedules 5.1 and 5.2 shall be in lieu of, and not in addition to, the remedies provided for under statutory law and/or case law. Except for the remedies provided for in Article 9, which shall not be limited by this Article 6.3, all other remedies for misrepresentation or breach of warranty, including, but not limited to, the right to rescind this Agreement following the Closing Date, shall not apply and are hereby explicitly waived. In particular, and without limitation to the foregoing, the Parties hereto explicitly waive (i) any and all rights pursuant to articles 192 *et seq.* and 197 *et seq.* CO and any rights of similar nature, including article 97 *et seq.* CO, (ii) the right of contract rescission under article 205 CO, and (iii) the right to challenge the validity of this Agreement for fundamental error under article 23 *et seq.* CO.

## 7. Conduct of Business between Signing and Closing

### 7.1 General

Unless otherwise provided herein or as set forth in Schedule 7.1, at all times from the date of this Agreement to the Closing Date, Seller shall procure that the TE Business continues to be operated as a going concern, in the ordinary course and consistent with prior practice.

### 7.2 Access to the TE Business

Subject to any constraints under applicable law, Seller shall procure that Buyer shall be given reasonable access during ordinary business hours after the date of this Agreement until the Closing Date to the management, legal and financial advisers and auditors and the documents of the TE Business, Seller and Seller's Affiliates to the extent this is reasonably required for Buyer or its advisers in the context of this Agreement and the actions contemplated hereunder.

### 7.3 Restricted Actions

Unless specifically provided in this Agreement or as set forth in Schedule 7.1, Seller and its Affiliates shall not, and shall procure that the TE Business (including each TE Company and, for purposes of this clause, the Excluded Plants) shall not, without prior written consent of Buyer (or, if applicable laws, in particular merger control laws, do not so permit, without prior

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business;

- (k) allow any registration of Intellectual Property Rights material to the TE Business to expire;
- (l) grant, create or allow to be created any Lien (excluding Permitted Liens) over any of the assets of the TE Companies or the TE Assets other than charges arising by operation of law;
- (m) borrow any money or incur any interest-bearing indebtedness or other liability owed to a third party in excess of CHF 1,000,000 per item or in any event in excess of CHF 10,000,000 in the aggregate or any indebtedness which provides for payment of penalties or repayment or prepayment or which is on terms which are of an onerous nature;
- (n) liquidate any TE Company or effect any material legal reorganization with respect to such TE Company except as required by mandatory laws;
- (o) initiate, discontinue or settle any litigation, arbitration, expert determination or other dispute resolution proceedings where the amount claimed together with any costs incurred or likely to be incurred exceeds CHF 1,500,000;
- (p) declare, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of the TE Companies' capital stock;
- (q) enter into, amend, modify or terminate or consent to the termination of any license, distribution and supply agreements or any Material Contracts, or amend, waive, modify, terminate or consent to the termination of any of the TE Companies' rights thereunder, other than in the ordinary course of business or for purposes of the IT Service Agreement;
- (r) close, transfer, or grant an interest in, any Transferred TE Real Property, any other material property, installation or equipment used for the TE Business;
- (s) change the accounting procedures, principles or practices of the TE Business unless required under applicable law or regulations or in accordance with the ordinary course of business;
- (t) change, stop or otherwise materially modify projects which the TE Business has commenced to implement other than pursuant the High Level Implementation Plan and the TE Business Plan as at the date hereof or for purposes of the IT Service Agreement;

agreements (and any related side letters) entered into by Seller or its Affiliates since January 1, 2005 and prior to the date of the Agreement (all of such agency, marketing and distribution agreements being listed in Schedule 7.4.1(b) and collectively referred to herein as the **Disclosed Agency Agreements**).

- (c) During the period between the date of this Agreement and the Closing Date, Seller shall accelerate its group-wide code of conduct compliance program with a specific focus on the TE Business to reinforce the implementation of such program.

#### 7.4.2 Additional Actions by the Parties

- (a) Promptly upon the execution of this Agreement, Buyer shall continue its review of the Disclosed Agency Agreements, and shall, no later than April 15, 2006, notify Seller of any of such Disclosed Agency Agreements that Buyer reasonably believes may not fully comply with the Relevant Compliance Rules. All Disclosed Agency Agreements that are not specifically identified in such notice as not complying with the Relevant Compliance Rules shall be deemed as compliant unless Buyer identifies new information prior to the Closing Date relating to such Disclosed Agency Agreements that causes Buyer, acting reasonably, to reconsider its initial determination that such agreements were compliant. In addition, during the time period between the signing of this Agreement and the Closing Date, Buyer and Seller shall cooperate to review any new agreements proposed to be entered into by Seller in order to comply with its obligations under Article 7.4.1(a) (the **New Agency Agreements**). As soon as reasonably practicable, Buyer, from time to time, shall notify Seller of whether Buyer reasonably believes that any proposed New Agency Agreement does not fully comply with the Relevant Compliance Rules. Buyer shall also regularly discuss with Seller its views with respect to actions required in order to ensure that each non-compliant Disclosed Agency Agreement or New Agency Agreement (each, a **Non-Compliant Agreement**) fully complies with the Relevant Compliance Rules.
- (b) In the event that Buyer notifies Seller of any Non-Compliant Agreements pursuant to paragraph (a), Seller shall, or cause its Affiliates to, use commercially reasonable best efforts to renegotiate, modify or take any other action requested by Buyer with respect to such Non-Compliant Agreement in order to ensure that such agreement (i) fully complies with the Relevant Compliance Rules and (ii) is consistent with Buyer's reasonable views regarding the measures to be taken to be compliant with the Relevant Compliance Rules. Seller agrees to keep the Buyer informed as to the progress of its efforts and to regularly update the Buyer on the progress of the satisfaction of its obligations under the preceding sentence.
- (c) At least ten (10) Business Days prior to the Closing Date, Buyer shall provide Seller with (i) a written notice of whether, in Buyer's reasonable discretion, any of the Non-

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## 8. Separation | Shape I, II and III

### 8.1 General Principles Applicable to Separation

- (a) The Parties shall use their commercially reasonable best efforts to separate, in cooperation with each other, the TE Business from the Asset Seller Companies in accordance with the principles reflected in the Carve-out Book, each attached hereto as Schedule 8.1(a), such principles to be continuously reassessed and, if necessary, amended by mutual written agreement of the Parties and to be reflected in the High Level Implementation Plan, a draft of which is attached hereto as Schedule 8.1(a).
- (b) The Parties agree, to the extent that any of the items to be effected by the Closing Date under the High Level Implementation Plan has not been carried out at the Closing Date, and the conditions to Closing are satisfied or waived, and Closing (subject to further Local Closings) occurs, to continue to cooperate and transfer any such outstanding item(s) as soon as reasonably practicable after the Closing Date.

### 8.2 Separation and Know How

The Parties acknowledge that it may be difficult for the various Persons involved to distinguish clearly between Transferred TE Know How and other Know How retained by the Ciba Group. Seller undertakes not to, and to cause its Affiliates not to, make any claims against Buyer or any of its Affiliates based on the use by Buyer or any of its Affiliates (other than in the businesses of the Ciba Group as of the Closing Date) of any of the Ciba Group's Know How (including chemical documentation) other than the Transferred TE Know How to the extent that such Know How was available to or within the TE Business at the Closing Date or at any time before the Closing Date. Buyer undertakes not to, and to cause its Affiliates not to, make any claims against Seller or any of its Affiliates based on the use by Seller or any of its Affiliates other than in the Textile Franchise of any of the Transferred TE Know How (including TE Chemical Documentation) to the extent that such Know How was available to the Ciba Group (but excluding, for the avoidance of doubt, the TE Business) at the Closing Date.

### 8.3 Separation Costs

- (a) Unless otherwise stated in this Agreement, including, but not limited to, Article 8.3(b) below, all costs, whether internal or external, relating to the obligations to separate from the Ciba Group, and thereupon to transfer to Buyer or its designated Affiliates, the TE Assets, the Transferring Employees and the Assumed TE Liabilities, and to retain the Excluded Liabilities, including the costs relating to the preparation of the transfer of such assets, employees, contracts and liabilities to Buyer or its designated Affiliates, shall be borne by Seller. All costs, whether internal or external, relating to

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Schedules 8.4(b) and 8.4(c) with respect to each of the Ancillary Agreements for execution by the Parties, or their designated Affiliates, on the Closing Date.

- (e) Buyer acknowledges that, upon effectiveness of the Ancillary Agreements, any service, supply or manufacturing agreement entered into by Seller or any of its Affiliates and any business unit being part of the TE Business prior to such effective date shall cease to be effective and be replaced in its entirety by the terms and conditions of such Ancillary Agreements.

## 8.5 Shape I, Shape II and Shape III

- (a) Any restructuring charges and cash-outs relating to the restructuring actions under Shape I, Shape II and Shape III, each as and to the extent identified in Schedule 8.5(a), shall be borne by Seller and shall not be considered Approved Restructuring Costs as hereinafter defined. The Parties understand and agree that any severance payments payable to any of the Transferring Employees, and any associated pension costs or liabilities, as a result of restructuring actions under Shape I, Shape II and Shape III, each as and to the extent identified in Schedule 8.5(a), shall be borne by Seller, regardless of whether such severance payments become payable on, before or after the Closing Date (all such costs to be borne by Seller under this Article 8.5(a) being collectively referred to herein as the **Retained Shape Costs**). If, and to the extent, Buyer or any of its Affiliates, including the TE Companies, pay(s), after the Closing Date, any of the Retained Shape Costs, Seller shall reimburse Buyer for such payments, plus interest at the rate specified in Article 12.3(a) from the date of Buyer's payment to the date of Seller's reimbursement, within ten (10) Business Days after any such payment by Buyer, by wire transfer of immediately available funds to an account designated by Buyer, with value as of the same date as such payments are made by Buyer, such payment being equal to the gross amount of such payments including, for the avoidance of doubt, the employer social security contributions. In relation to the restructuring charges and cash-outs made by Seller in implementation of the restructuring actions under Shape I, Shape II and Shape III, each as and to the extent identified in Schedule 8.5(a), Seller shall provide Buyer such supporting information as Buyer may reasonably request in order for Buyer to be able to verify that Seller has satisfied its obligation hereunder.
- (b) Promptly following the date of this Agreement, subject to applicable competition laws, Seller and Buyer shall meet and discuss proposals on the scope and cost of (i) the restructuring actions under Shape III (other than those identified in Schedule 8.5(a)) or (ii) other restructuring actions that, in the case of either (i) or (ii), the Parties mutually agree should be implemented and paid for by the Seller after the date of this Agreement and prior to the Closing Date (the **Additional Restructuring Actions**). The Parties shall discuss such proposals in good faith with a view to agreeing the

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relating in any way to the Assumed TE Liabilities.

### 9.3 Tax

- (a) Except for Taxes reflected in Net Working Capital and Net Debt and thus subject to the adjustments set forth in Article 2.5 and except as specifically provided for in Articles 12.1.1, 12.1.2 and 12.1.3, Seller shall be responsible for and pay, and indemnify Buyer and any of its Affiliates for, and hold each of them harmless against, all Taxes with respect to the TE Companies and the Transferred TE Assets for any period up to and including the Closing Date, including, but not limited to:
- (i) any liability for Taxes arising out of any act, omission, event or transaction occurring during any period up to and including the Closing Date;
  - (ii) any liability for, or entitlement to refunds and credits of, Taxes arising by reference to capital, equity, income, profits or gains earned, accrued or received during any period up to and including the Closing Date;
  - (iii) any liability for Taxes of another Person resulting from being included in any consolidated, combined or group Tax Return during any period prior to or including the Closing Date; and
  - (iv) any liabilities for Taxes for which Seller is responsible pursuant to Article 12.1.2.
- (all of such liabilities being collectively referred to as the **Retained Tax Liabilities**).
- (b) Buyer shall be responsible for and pay, and indemnify Seller and any of its Affiliates for, and hold each of them harmless against, (i) all Taxes with respect to the TE Companies and the Transferred TE Assets for any period after the Closing Date, including, but not limited to, all Taxes payable as a result of any transaction outside of the ordinary course of business occurring after the Closing Date and (ii) all Taxes in connection with the transactions contemplated under this Agreement, if and to the extent such taxes have been allocated to the Buyer pursuant to Article 12.1.2.
- (c) Except for refunds reflected in Net Working Capital and thus subject to the adjustments set forth in Article 2.5, Seller shall be entitled to, and Buyer shall (in the event of misdirection) reimburse Seller for, all refunds and credits of all Taxes with respect to the TE Companies and the Transferred TE Assets for which Seller is responsible under this Agreement.
- (d) Buyer shall be entitled to, and Seller shall (in the event of misdirection) reimburse

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## 9.4 Environment

### 9.4.1 Identified Sites

#### 9.4.1.1 Environmental Investigations

- (a) Up to the Closing Date, Seller and Buyer shall jointly mandate a Person to be agreed upon (the Environmental Expert) to carry out the environmental investigations (the Environmental Investigations) at the sites specified in Schedule 9.4.1.1 (the Identified Sites) necessary to establish zero baseline situation reports (the Baseline Reports) and determine therein Material Contamination, if any, of the Identified Sites with Dangerous Substances that can reasonably be determined to exist as of the Closing Date at such sites. All such Material Contamination identified in such Baseline Reports, together with any other Material Contamination existing at an Identified Site or emanating or released therefrom prior to the Closing Date, is hereinafter referred to as Material Existing Contamination. Data collected after the Closing Date shall not be included in the Baseline Reports unless the Parties agree otherwise. The scope of the Environmental Investigations shall be determined by Buyer in cooperation with Seller, including appropriate quality assurance/quality control requirements; it being understood that the Parties anticipate that with respect to the Identified Sites set forth in section A of Schedule 9.4.1.1 "phase 2 investigations" (with sampling) will be carried out, and with respect to the Identified Sites set forth in section B of Schedule 9.4.1.1 "phase 1 studies" (without sampling) will be carried out. Factual data gathered by the Environmental Expert which meets such quality assurance/quality control requirements shall be accepted by the Parties as evidence of the condition of the Identified Sites at the time the data was collected; *provided, however*, that nothing in this subparagraph 9.4.1.1 shall be interpreted as precluding the admission/consideration of any additional relevant and material evidence regarding Material Existing Contamination.
- (b) The costs and expenses incurred for the Environmental Investigations, including restoration of each Identified Site to its condition prior to the commencement of the Environmental Investigations in the event this Agreement is not consummated for any reason, shall be equally shared between Seller and Buyer. Seller and Buyer shall each have the right to be present at all times during the Environmental Investigations.
- (c) All information obtained from the Environmental Investigations (i) shall be provided to both Seller and Buyer, (ii) shall be kept confidential by Seller and Buyer pursuant to Article 13.7 and (iii) shall not be provided to any Person other than the Parties hereto, except as otherwise permitted under Article 13.7. In the event that the Environmental Investigations identify conditions at any of the Identified Sites that in the opinion of the Environmental Expert or Buyer may require notice to a governmental authority prior to

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(2) Buyer shall give Seller the opportunity to be involved in determining the method and scope of any Covered Remedial Action; *provided, however*, that any such involvement shall not prevent the Covered Remedial Action from being implemented in accordance with Article 9.4.1.2(b)(i) and in compliance with the Environmental Laws applicable in the respective jurisdiction;

(3) Buyer shall give Seller reasonable opportunity, by giving reasonable prior written notice, to attend and participate in any material meetings or conference calls with the competent authorities with respect to the Covered Remedial Actions;

(4) Buyer shall provide Seller with copies of all reports, correspondence, analytical results and other relevant documentation with respect to the Covered Remedial Actions; and

(5) Buyer shall provide Seller a reasonable opportunity of at least twenty-five (25) Business Days (unless exigent circumstances otherwise require) to review and comment on drafts of any Remedial Action Plan or other material submission to governmental authorities or third parties with respect to the Covered Remedial Actions. Buyer shall take reasonable account of Seller's comments in relation thereto;

(iii) subject to the reimbursement of costs and expenses pursuant to the allocations set forth herein, Buyer shall have the right and obligation, after reasonable consultation with Seller and without prejudice to its other rights or obligations hereunder, to take such action as is reasonably necessary to respond to actual or threatened emergencies at or affecting the Identified Sites.

(c) Upon any change in use of any Identified Site of the TE Business, or divestiture by Buyer of any Identified Site or any asset related thereto to a third party (including an Affiliate of Buyer), Seller's liability under this Article 9.4.1.2 shall only continue to the extent such change or divestiture does not materially adversely affect Seller's position under this Article 9.4.1.2. To the extent of such adverse effect on Seller's position under this Article 9.4.1.2, Seller's liability hereunder relating to the Identified Site shall cease to be effective and Buyer shall indemnify Seller and each of its Affiliates for, and hold each of them harmless against, any liability resulting thereof.

(d) In no event shall Seller be liable for costs and expenses for remedial actions to the extent such actions are required by more stringent standards under the Environmental Laws as in force at the Closing Date which become applicable only as a result of a change in use of any Identified Site by Buyer or any of its Affiliates, including, as from



being implemented in compliance with the Environmental Laws applicable in the respective jurisdiction;


- (iii) Seller shall give Buyer reasonable opportunity, by giving reasonable prior written notice, to attend and participate in any material meetings or conference calls with the competent authorities with respect to the Covered Remedial Actions;
  - (iv) Seller shall provide Buyer with copies of all reports, correspondence, analytical results and other relevant documentation with respect to the Covered Remedial Actions; and
  - (v) Seller shall provide Buyer a reasonable opportunity of at least twenty-five (25) Business Days (unless exigent circumstances otherwise require) to review and comment on drafts of any Remedial Action Plan or other material submission to governmental authorities or third parties with respect to the Covered Remedial Actions. Seller shall take reasonable account of Buyer's comments in relation thereto;
- (b) subject to the reimbursement of costs and expenses pursuant to the allocations set forth herein, Seller shall have the right and obligation, after reasonable consultation with Buyer and without prejudice to its other rights or obligations hereunder, to take such action as is reasonably necessary to respond to actual or threatened emergencies at or affecting the Leased Sites;
- (c) Buyer shall, and shall cause any of its Affiliates, including, after the Closing Date, the TE Companies to grant reasonable access to Seller, any of its Affiliates and its representatives, employees, agents and contractors to enter upon the Leased Sites and any building and improvement thereon for purposes of conducting the Covered Remedial Actions. Seller shall use its commercially reasonable best efforts to minimize disruption to the business activities of Buyer or any of its Affiliates in the course of performing the Covered Remedial Actions; and
- (d) reasonably prior to the expiration of the lease in respect of any of the Leased Sites, Seller and Buyer shall jointly mandate the Environmental Expert to carry out environmental investigations at the respective Leased Site as necessary to establish Baseline Reports and determine therein Material Contamination, if any, of the respective Leased Site with Dangerous Substances that can reasonably be determined to have been caused by Buyer between the Closing Date and the date on which Buyer discontinues its operation at the respective Leased Site (the Lease End Date). All such Material Contamination identified in such Baseline Reports, together with any other Material Contamination caused by Buyer between the Closing Date
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adjacent or nearby properties, such as the Tivona project. Seller shall undertake its commercially reasonable best efforts to have this risk assessment completed prior to Closing and submitted both to Buyer and the authorities (*Gesundheitsdepartement Basel-Stadt/Kontrollstelle für Chemie und Biosicherheit*). The costs for the risk assessment will be shared equally between Seller and Buyer;

- (c) utilizing the results of the risk assessment referred to in Article 9.4.3(b), Seller shall, with the prior written approval of Buyer and following prior consultation with the relevant authorities: (i) take all actions necessary to bring the risks presented by the HF Site within "tolerable" limits in accordance with the Dutch risk management framework and requirements (it being understood that with respect to requirements specifically designed to addressing risks resulting from pending or proposed uses on adjacent or nearby properties, such as the Tivona project, Seller shall only be required to take the respective actions if, within the general timeframe ordered by or agreed with the competent authorities within which the actions to be undertaken hereunder are to be undertaken, such pending or proposed use is reasonably certain to be implemented), and (ii) take all such further steps as may be necessary to satisfy any additional requirements imposed by the aforementioned authorities as a result of such risk assessment (together the **Risk Management Actions**). Any necessary governmental authorizations shall be obtained by Seller. Where the Risk Management Actions involve work on the HF Site, Seller and Buyer shall coordinate to minimize the impact of the work on ongoing operations and assure the safety of all workers. Seller shall undertake its commercially reasonable best efforts to undertake all actions to be undertaken hereunder within the timeframe ordered by or agreed with the competent authorities;
- (d) for avoidance of doubt, it is the intention of the Parties that Seller should bear all costs necessary to address the risk management issues described in clauses (a) through (c) above. Should the authorities require any actions of Buyer in order to ensure compliance of the HF Site with all applicable regulations regarding earthquake protection (based on clause (c) above) or protection against other risks (based on the updated risk assessment referred to in clauses (b) and (c) above), Seller shall indemnify Buyer for all costs incurred by Buyer in undertaking such actions.

#### 9.4.4 Seller's Liability for Off-Site Releases

Seller shall indemnify and hold harmless Buyer, and Buyer's Affiliates, officers, agents and employees, against and from all claims, liabilities, losses and expenses suffered or incurred at any time arising from or in connection with any release, prior to the Closing Date, by or from any part of the TE Business at any location other than Identified Sites, of any Dangerous Substance into the environment. For avoidance of doubt, Seller's liability to Buyer for the



#### 9.4.7 Environmental Liability of the Parties

- (a) Buyer shall reimburse Seller any amount paid by Seller, following the Closing Date, to third parties or governmental authorities in respect of the TE Business which are in excess of the liability of Seller allocated under this Article 9.4; *provided, however*, that Seller has timely informed Buyer of such claims and has given Buyer reasonable opportunity to assist Seller in defending such claims.
- (b) Seller shall have no liability to Buyer pursuant to Article 9.4.1.2 relating to Identified Sites after the fifteenth (15<sup>th</sup>) anniversary of the Closing Date, without prejudice to any claims thereunder notified to Seller prior to such date. For the avoidance of doubt, this 15-year limitation on Seller's liability does not apply to Leased Sites (Article 9.4.2) or to Seller's liabilities pursuant to Articles 9.4.3, 9.4.4 or 9.4.5.

#### 9.4.8 Reallocation of Liabilities

If any court, tribunal, governmental entity or other legal authority imposes any liability on either Party pursuant to Environmental Laws or Health and Safety Laws that is substantially different from the manner in which the liability is allocated between the Parties pursuant to this Article 9.4, then the Party subject to the increased liability shall be reimbursed by the other Party to the extent necessary to restore the allocation of liabilities under this Article 9.4.

### 10. Other Covenants

#### 10.1 Press Releases and Other Public Announcements

Following the date of this Agreement until ten (10) Business Days after (x) the Closing Date or (y) termination of this Agreement pursuant to Article 4.2.5, all public announcements or press releases issued in connection with the transactions contemplated by this Agreement shall only be published after Buyer and Seller shall have consulted and agreed on the contents of such public announcements or press releases. Nothing in this Agreement shall restrict or prohibit:

- (a) any announcement or disclosure required by law or by any competent authority or by any competent securities exchange;
- (b) Buyer from informing customers or suppliers of the acquisition of the TE Business by Buyer after the Closing Date; or
- (c) Buyer from making any disclosure to any of its directors, officers, employees, agents or advisers who are required to receive such information to carry out their duties (conditional upon any such Person agreeing to keep such information confidential for

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the instructions of Buyer. Buyer shall indemnify Seller and its Affiliates for, and hold each of them harmless against, all claims and liabilities arising out of, or in connection with, the fiduciary performance by Seller or its Affiliates arising out of or in connection with Buyer's non-proper performance of the Deferred Undertakings.

### **10.3 Transfer | Change of Control Clauses of the Transferred TE Contracts**

- (a) Buyer and Seller will cooperate in seeking the transfer of all Transferred TE Contracts that relate exclusively or primarily to the TE Business, it being understood that the contracts primarily relating to the TE Business can only be transferred if, under the relevant Transferred TE Contract, a partial transfer is permissible, from the Asset Seller Companies to Buyer or its designated Affiliates, effective as of or as soon as practicable after the Closing Date. To the extent required, for each Transferred TE Contract, Seller and Buyer will use their commercially reasonable efforts to effect transfer of that Transferred TE Contract to Buyer or its designated Affiliate so that Buyer or its designated Affiliate is substituted for the Asset Seller Companies under the Transferred TE Contract and the Asset Seller Companies are, subject to Articles 2.2.2(a)(ii) and 9.1, relieved of all further liabilities and rights relating to such Transferred TE Contract (except as otherwise provided in this Agreement).
- (b) In the event that any Transferred TE Contract (but excluding any of the Transferred TE Contracts that are Key Assets) cannot be transferred in accordance with Article 10.3(a), with respect thereto, then as of the Closing Date, this Agreement, to the extent permitted by law and the terms of the Transferred TE Contract, shall be deemed to effectuate full assignment by the Asset Seller Companies to Buyer or its designated Affiliates of all of the Asset Seller Companies' benefits and burdens under such Transferred TE Contract, and Buyer or its designated Affiliates shall be deemed the Asset Seller Companies' agent for purposes of discharging all of the Asset Seller Companies' obligations thereunder except as otherwise provided in Article 10.3(e). The Parties shall use their commercially reasonable efforts to take all necessary steps and actions to provide Buyer or its designated Affiliates with the benefits of such Transferred TE Contract, and to relieve the Asset Seller Companies of the performance and other obligations thereunder (subject to Articles 2.2.2(a)(iii) and 9.1).
- (c) In the event that Seller shall be unable to make the transfer or assignment of one (1) or more Transferred TE Contracts as described in Article 10.3(a) and (b) (but excluding any of the Transferred TE Contracts that are Key Assets), or if such attempted transfer or assignment would give rise to the exercise of any right of termination, or would otherwise adversely affect the rights of the Asset Seller Companies or Buyer or its designated Affiliates under such Transferred TE Contract, or would not assign all of the Asset Seller Companies' rights thereunder at the Closing



except to the extent attributable to the gross negligence or wilful misconduct of Seller or its Affiliates and in the event of a failure of such indemnity, Seller and each of its Affiliates shall cease to be obligated under this Agreement with respect to the Transferred TE Contract which is the subject of such failure.

- (e) If, at the end of the one (1) year period described in clause (c) or such later date as designated by Buyer (acting reasonably), Seller is still unable to effect the transfer or assignment of any such Transferred TE Contract, Seller shall be in breach of its obligations under this Agreement and Buyer shall be entitled to recover from Seller all losses, costs, damages and expenses suffered or incurred by Buyer and its Affiliates as a result of the inability of Seller to effect such transfer or assignment, including, without limitation, any direct, indirect or consequential costs, losses, expenses and damages which so result. None of the limitations on or exclusions of the liability of Seller set forth in Articles 6.1 or 11(a) and (b) shall apply.

#### 10.4 Change of Control Clauses of Contracts to Which a TE Company is a Party

- (a) Seller and Buyer shall cooperate and use their commercially reasonable efforts to procure that any consents, approvals or waivers of any third party under any contract or agreement to which a TE Company is a Party, which gives rise to a right of termination upon change of control and which is material to the TE Business, all as set forth in Schedule 10.4, shall have been obtained on or before the Closing Date.
- (b) In the event that the Parties shall have not been able to obtain any consent, approval or waiver of any third party under such contracts, but excluding any such contract that is a Key Asset, Seller and Buyer shall, from and after the Closing Date, continue to cooperate and use commercially reasonable efforts to obtain all such consents, approvals or waivers required to transfer such contracts to Buyer or its designated Affiliates.
- (c) To the extent that any such consents or waivers are not obtained, and until the applicable consent, approval or waiver is obtained, or, if later, one (1) year after the Closing Date (or such longer period as Buyer, in its reasonable discretion, shall designate), Article 10.3(c) shall apply *mutatis mutandis*.
- (d) To the extent that Buyer or its designated Affiliates are provided the benefits of any contract subject to Article 10.4(c), Buyer or its designated Affiliates shall perform on behalf of Seller or its Affiliates and for the benefit of any third party the obligations of Seller or its Affiliates thereunder or in connection therewith. Buyer agrees to discharge, and indemnify Seller and each of its Affiliates for and hold each of them harmless against, all liabilities of each of Seller and its Affiliates relating to such

- (b) Seller shall pay or cause to be paid any fees for renewal and maintenance of any of the Transferred TE Trademarks, Transferred TE Domain Names and Transferred TE Patents that are due prior to the Closing Date. As of the Closing Date, all other renewal and maintenance fees shall be paid by Buyer.
- (c) Article 10.6(a) and (b) shall apply *mutatis mutandis* with respect to the Trademarks, domain names and Patents owned by or registered in the name of any of the TE Companies.

#### 10.7 Corporate Name, Trademarks and Domain Names

- (a) Except as set forth in Articles 2.2.1(a)(i), 2.2.1(a)(ii), 2.2.1(a)(iii), 2.3 and Schedule 5.1, no interest in any corporate name, Trademark or domain name of Seller or any of its Affiliates is being transferred to Buyer pursuant to this Agreement, and Buyer shall procure that its Affiliates, including, as from the Closing Date, the TE Companies, as soon as commercially practicable and in no event later than by the end of the Transition Period, shall change or remove the word «Ciba» or any combination containing the word «Ciba», any other word or words resembling the word «Ciba» or the «Ciba» butterfly and the «Ciba» type face. Except as specifically contemplated herein, as from the Closing Date, Buyer shall not, and shall procure that the TE Business shall not, take any action that might create the impression that the TE Business continues to be a part of Seller or any of its Affiliates.
- (b) Notwithstanding the foregoing, for a period of up to the Transition Period (but subject to applicable laws and regulations in the respective territory), Buyer, including the TE Companies, shall be entitled to sell the Inventory of the TE Business existing as at the Closing Date that is labeled with the word «Ciba», the «Ciba» butterfly and the «Ciba» type face. Buyer shall use commercially reasonable endeavors, at its own expense, (i) to obtain, as promptly as possible, but by the end of the Transition Period, such approvals of competent government authorities as may be necessary to change Buyer's labeling for each of the products (as identified by a TE Companies Trademark or a Transferred TE Trademark) in such a way that any reference to Seller or any of its Affiliates is removed as well as (ii) to implement, as promptly as possible, but by the end of the Transition Period, such change of labeling.
- (c) Seller shall not use or register any new Trademark identical or confusingly similar to any of the Transferred TE Trademarks. Buyer shall not use or register any new Trademark identical or confusingly similar to any of Seller's Trademarks (other than the Transferred TE Trademarks) used by Seller.

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required by law, and subject to the attorney-client privilege, Buyer shall procure that the TE Business shall afford Seller and its advisers reasonable access, upon prior notice during normal business hours, to such directors, officers, employees, advisers, offices, properties, agreements, records, books and affairs of the TE Business, and shall provide copies of such information, as Seller may reasonably request in connection with:

- (i) the preparation of any Tax Returns in so far as the TE Business is relevant to them;
- (ii) any judicial, quasi-judicial, administrative, Tax, audit, or arbitration proceedings involving or affecting Seller or its Affiliates which relate to or involve the TE Business or its affairs;
- (iii) the preparation of any financial statements or reports in so far as the TE Business is relevant to them; and
- (iv) the Excluded Liabilities and the licenses under Article 2.3.

#### 10.11 Non-Competition

- (a) Seller will not, and shall cause its Affiliates (and any successor to the foregoing) not to, for a period of three (3) years from the Closing Date, directly or indirectly acquire or own any interest, or otherwise participate or engage, anywhere in the world, in any business active in the Textile Franchise (the **Protected Activity**).
- (b) Notwithstanding the foregoing, Seller and its Affiliates shall not be prohibited from, or restricted in:
  - (i) purchasing products or services for use outside the Protected Activity, or marketing, selling or supplying products used by a third party not affiliated with the Seller to manufacture products within the scope of the Textile Franchise; or
  - (ii) owning, acquiring or entering into a business combination in any manner with any entity that is engaged in the Protected Activity if, in the twelve (12) months prior to the acquisition or combination with such entity, the consolidated revenue of such entity from such activities constituted thirty-three one third percent ( $33\frac{1}{3}\%$ ) or less of the total consolidated revenue of such entity, in which event such (combined) entity and its Affiliates shall be permitted to continue such activities; provided that Seller shall not provide such entity with any Know How or other material information relating to the use of such Know

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- (b) As soon as practicable after the Closing Date and, in any event no later than sixty (60) Business Days following the Closing Date, Seller shall deliver to Buyer unaudited financial statements in accordance with U.S. GAAP, as applied by the Ciba Group Controller's Manual, for the time period from December 31, 2005 through the Closing Date, along with financial statements with respect to TE Business for the same period in the preceding year.
- (c) If Closing occurs more than sixty (60) Business Days after March 31, 2006, Seller shall deliver, at Closing, to the Buyer, unaudited financial statements with respect to the TE Business in accordance with U.S. GAAP, as applied by the Ciba Group Controller's Manual, for the three months ended March 31, 2006, along with financial statements for the same period in the preceding year. In respect of the period from March 31, 2005 through the Closing Date, subparagraph (b) above shall apply.
- (d) All financial information delivered pursuant to this Article 10.12 shall meet the requirements of Regulation S-X, Section 210.3-05 of the Federal Securities Laws of the United States of America. All cost incurred in connection with the preparation and establishment of the such financial information shall be shared equally between Buyer and Seller. Seller shall undertake commercially reasonable best efforts to obtain any consent by E&Y required to use the information provided pursuant to this Article 10.12 for reporting purposes. For the avoidance of doubt, for purposes of the Net Working Capital and Net Debt adjustments set forth in Article 2.5, the Final Closing Balance Sheet and the Final Local Closing Balance Sheets, respectively, shall be final and binding on the Parties, regardless of whether there are any inconsistencies with any of the Prior Year Financials.
- (e) The Parties agree that all current inter-company trade balances between the Ciba Group and the TE Business, as set forth in Schedule 10.12, shall be settled, to the extent possible, as of the Closing Date but no later than thirty (30) Business Days thereafter unless otherwise mutually agreed by the Parties in writing. Provided, however, that any inter-company trade balances between the Ciba Group and Panyu, Shenzhen, Qingdao and Swathi shall be settled as of the Closing Date.

#### 10.13 No Recourse Against Directors

- (a) Neither Seller nor Buyer shall make, and procure that none of its Affiliates, including the TE Companies, shall make, any claim against any director or officer of the TE Business in connection with this Agreement or the agreements pursuant hereto or otherwise in connection with the transactions contemplated hereby, except in cases of willful misconduct or gross negligence of the director or officer concerned.
- (b) At the first annual meeting of each TE Company, Buyer shall vote, or cause the

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## 11. Limitations on Seller's Liability

- (a) Subject to paragraph (d) below, Seller shall not be liable to Buyer for any claims for damages asserted by Buyer against Seller under this Agreement for breaches of representations or warranties unless the amount of liability against Seller, on an aggregate basis, exceeds CHF 15 million less any Pre-Closing Liability Amount (the **Deductible Amount**), whereupon Seller's liability to Buyer shall be equal to the amount exceeding the Deductible Amount; *provided, however*, that (i) Seller shall not be liable to Buyer for any single claim for damages asserted by Buyer against Seller under this Agreement for breaches of representations or warranties unless such claim, on a stand-alone basis, or series of related claims taken together, exceeds the amount of CHF 250,000 (the **De Minimis Amount**), and (ii) the Deductible Amount and De Minimis Amount shall not be applicable to breaches of Seller's representations or warranties in Sections 1, 4, 5, 6, 7, 19, 20 and 27 of Schedule 5.1.
- (b) Subject to paragraph (d) below, Seller's aggregate liability for damages under this Agreement for breaches of representations and warranties shall not exceed CHF 100 million (the **Cap**); *provided, however*, that the Cap shall not be applicable (i) if, and to the extent, Seller's liability under this Agreement is caused by fraud or willful misconduct of Seller, (ii) to breaches of Seller's representations or warranties in Sections 1, 4, 5, 6, 7, 19, 20 and 27 of Schedule 5.1, or (iii) to breaches of or proceedings in connection with competition or antitrust laws.
- (c) Subject to paragraph (d) below, Seller's liability in respect of any breach of Seller's obligations under this Agreement shall be excluded or reduced, as the case may be, if, and to the extent:
- (i) Buyer or any of its Affiliates, including, as from the Closing Date, the TE Companies, have failed to use their reasonable endeavours to mitigate the loss or damage in respect thereof;
  - (ii) Buyer and any of its Affiliates, including, as from the Closing Date, the TE Companies, have actually recovered or could have, using reasonable endeavours, recovered from any third Person, including, but not limited to, an insurer, costs, expenses or damages in respect of any matter to which a claim asserted relates, after deduction of all duly documented costs and expenses incurred in making such recovery (including reasonable attorneys' fees). Buyer shall reimburse Seller forthwith an amount equal to any sum paid by Seller in respect of any claim subsequently recovered by or paid to the Buyer or any of its Affiliates by any other Person in respect of the matter giving rise to the claim (less any expenses incurred in making such recovery);
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TE Shares or the Transferred TE Assets are situated, in particular where such sale and transfer is regarded, for purposes of the applicable VAT legislation, as a transfer of all or part of the assets of a business as a going concern. Seller shall, if requested by Buyer, appeal any determination of the competent VAT authority that such sale and transfer is taxable if the VAT at issue exceeds CHF 100,000.

- (b) If, notwithstanding such efforts, any competent VAT authority determines within the applicable limitation period that VAT is chargeable in respect of the supply of all or any of the TE Shares or the Transferred TE Assets or part thereof under this Agreement, and Seller is assessed to VAT in relation to the transaction(s), Seller will, within ten (10) Business Days of being notified by the VAT authority of such a decision, issue a valid VAT invoice (or other such appropriate documentation) to Buyer in connection with the transaction such as will allow Buyer to pay the Seller the consideration inclusive of VAT and to validly recover the VAT incurred.
- (c) Seller and Buyer shall cooperate to procure that any TE Companies shall leave any VAT group, insofar as they are members to such a group, as at the Closing Date.

#### 12.1.2 Other Taxes

Without prejudice to Article 10.6, all registration and transfer taxes and fees, stamp duties or Taxes (including the Swiss securities transfer stamp tax (*Umsatzabgabe*)), notaries' or governmental charges (other than VAT, goods and services Tax, sales and use Tax (or equivalent Tax)) resulting from or relating to the transfer of the TE Business and any transactions contemplated under this Agreement shall be shared equally between the Parties.

#### 12.1.3 Tax Returns | Tax Audits and Cooperation in Other Tax Matters

- (a) Seller shall be responsible for the timely preparation and filing of all Tax Returns of or with respect to the TE Companies and the Transferred TE Assets required to be filed on or before the Closing Date. Seller shall be responsible for the payment of all Taxes required to be included on such Tax Returns.
- (b) Buyer shall be responsible for the timely preparation and filing of all Tax Returns of or with respect to the TE Companies and the Transferred TE Assets required to be filed after Closing Date. With respect to any such Tax Return that includes any period prior to the Closing Date, not later than thirty (30) days prior to the due date of each such Tax Return, Buyer shall deliver to Seller for its review and comments a copy of such Tax Return along with a determination of the portion of the amount of Taxes reflected on such Tax Return that are attributable to the period (or portion thereof) ending on or before the Closing Date. Buyer shall cooperate fully and make changes to such Tax

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- (e) Prior to Closing, Seller shall provide to Buyer information, including a summary document, containing a full description of the transfer pricing practices and methodologies for all relevant jurisdictions of the TE Business in sufficient detail to allow Seller to assume the administration of the Tax function and the record-keeping required for Tax purposes. Such description shall include, but not be limited to, the following:
- (i) inter-company royalty arrangements, including amounts of royalties and items which are subject to the royalty;
  - (ii) contract manufacturing, toll manufacturing and similar arrangements, including agreements to purchase all inventory;
  - (iii) cost-plus, resale minus, cost sharing and other transfer pricing arrangements; and
  - (iv) arrangements to reimburse headquarters expense, R&D expense, sales expense, distribution expense, and other related party expenses.
- (f) Seller shall use its commercially reasonable best efforts to cause the fiscal year end of Pfersee to occur as of a date as reasonably close to Closing as possible.

#### 12.1.4 Disputes

Buyer shall have exclusive control over and responsibility to conduct any contest for any taxable period commencing on or after the Closing Date. Buyer shall not enter into any agreement in compromise or settlement of such contest, which could adversely affect any Taxes with respect to the TE Companies or the Transferred TE Assets for any period up to and including the Closing Date without the written consent of Seller. Seller shall not be liable for any portion of any settlement of any contest relating to such Taxes without their written consent.

#### 12.2 Costs and Expenses

Except as expressly provided otherwise herein, including, but not limited to Article 8.3, each Party shall bear its own costs and expenses (including advisory fees) incurred in the negotiation, preparation and completion of this Agreement.

#### 12.3 Interest

- (a) The interest rate to be applied to the interest calculation set forth in Article 2.5.3 shall be a rate of three (3) month CHF-LIBOR (as quoted by Bloomberg on the date that is

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If to Seller to:

Ciba Specialty Chemicals Holding Inc.  
Attn: Head Group Services Law & Environment,  
Corporate Secretary  
Klybeckstrasse 141  
4002 Basel, Switzerland  
Fax: + 41 61 636 51 80

with a copy to:

Homburger Rechtsanwälte  
Attn: Flavio Romerio | Daniel Daeniker  
Weinbergstrasse 56/58  
8035 Zürich, Switzerland  
Fax: + 41 43 222 15 00

and a copy to:

Dufour Advokatur  
Attn: Monika Naef  
Dufourstrasse 49  
4056 Basel, Switzerland  
Fax: + 41 61 205 03 03

If to Buyer to:

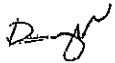
Huntsman International LLC  
Attn: General Counsel  
500 Huntsman Way  
Salt Lake City, Utah 84108  
Fax: + 1 801 584 67 82

with a copy to:

Huntsman International LLC  
Attn: Deputy General Counsel  
10003 Woodloch Forest Drive  
The Woodlands, Texas 77380  
Fax: + 1 281 719 40 45

with a copy to:

RM 2526 Vermögensverwaltungs GmbH, registered AG  
München HRB 160194, Germany (whose name is  
currently being changed to Huntsman (Holdings)  
Germany GmbH  
Land-AV 30,  
94469 Deggendorf, Germany  
Fax: +49(0)9912704180



Buyer and such Transferee against Seller following such transfer;

*provided, however,* that such assignment of any Seller's SAPA Obligation shall only become effective if: (x) the Buyer delivers to Seller a full and complete copy of its or its Affiliates' agreement or agreements with the Transferee (including all annexes, schedules and side letters thereto), (y) the Transferee delivers to the Seller a duly executed written statement agreeing to submit, in the event of a dispute in relation to Seller's SAPA Obligations, to the dispute resolution set out in Article 14.2;

and *provided further,* that: (x) Seller's liability for Seller's SAPA Obligations shall not be increased or otherwise materially and adversely affected in any manner as a result of such assignment, (y) the Buyer shall not be entitled to assign Seller's SAPA Obligations herein to more than three (3) Persons, and (z) the Transferee shall not be entitled to assign any such benefit to any third Person, in both (y) and (z) without the prior written consent of Seller.

- (b) Following any assignment or transfer in accordance with Article 13.5(a):
  - (i) the Cap on the liability of the Seller under Article 11(b) to each of Buyer and such transferee shall be the amount notified to Seller under Article 13.5(a); and
  - (ii) the Deductible Amount set out in Article 11(a) shall be calculated by reference to the aggregate liability of Seller to Buyer and the Transferee(s).
- (c) Save as provided in this Article 13.5, the Parties shall not assign this Agreement or any rights or obligations hereunder to any third party without the prior written consent of Seller (if the assignment is proposed to be undertaken by Buyer) or Buyer (if the assignment is proposed to be undertaken by Seller).

### 13.6 Severability

Should any part or provision of this Agreement be held to be invalid or unenforceable by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the other provisions of this Agreement shall nonetheless remain valid. In this case, the Parties shall endeavor to negotiate a substitute provision that best reflects the economic intentions of the Parties without being unenforceable, and shall execute all agreements and documents required in this connection.

### 13.7 Confidentiality

Each Party hereto will neither use nor disclose, and will use its commercially reasonable best efforts to cause its Affiliates, and their respective representatives and advisers to neither use



by Buyer (at no cost to Seller and its Affiliates), in particular, but not limited to, powers of attorney and authorizations, to enforce such agreements.

### **13.8 Certain Audit Rights**

Upon reasonable prior written notice to Seller, Buyer shall have the right (at its own cost) to access, with its designated representatives and during ordinary business hours, (a) Seller's and its Affiliates' records and data as the Buyer may reasonably request to review the correctness of any invoice issued by the Seller or its Affiliates to Buyer or its Affiliates in relation to any Ancillary Agreement, the IT Service Agreement or Excluded Plant Lease Agreements, provided that such audit shall not unduly interfere with the conduct of the Seller's and its Affiliates' business operations, or (b) Seller's and its Affiliates' records and data, and the records and data of Merrill Corporation, who operated the electronic data room, as reasonably requested by Buyer in order for Buyer to fully review and audit the operation of the electronic data room, including complete details regarding the loading of documents onto such data site and the dates and nature of any amendments, substitutions or additions to documents in the electronic data room.

### **13.9 Execution**

Delivery of an executed counterpart of a signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

### **13.10 Headings**

The headings contained in this Agreement (including the Schedules and Annexes hereto) are for reference purposes only and in no way define, limit or describe the scope or intent of any provision hereof.

## **14. Governing Law and Dispute Settlement**

### **14.1 Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of Switzerland (excluding the Vienna Convention on the International Sale of Goods, dated April 11, 1980).

*B. W.*

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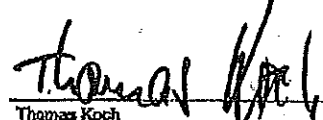
Share and Asset Purchase Agreement

02/09

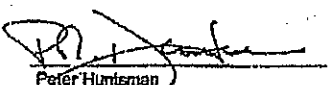
In witness whereof, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers in duplicate as of this 18<sup>th</sup> day of February, 2006 in Zurich, Switzerland.

Giba Specialty Chemicals Holding Inc.

  
Michael Jacob  
Chief Financial Officer

  
Thomas Koch  
Head Group Services Law &  
Environment, Corporate Secretary

Huntsman International LLC

  
Peter Huntsman  
Chief Executive Officer

RM 2526 Vermögensverwaltungs GmbH

  
Paul G. Hulme  
Geschäftsführer